

# Order

Michigan Supreme Court  
Lansing, Michigan

January 27, 2012

Robert P. Young, Jr.,  
Chief Justice

143780

Michael F. Cavanagh  
Marilyn Kelly  
Stephen J. Markman  
Diane M. Hathaway  
Mary Beth Kelly  
Brian K. Zahra,  
Justices

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellant,

v

SC: 143780  
COA: 298299  
Wayne CC: 09-011819-FH

ANTHONY BROOKS,  
Defendant-Appellee.

On order of the Court, the application for leave to appeal the August 16, 2011 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we VACATE, as dicta, the portion of the judgment of the Court of Appeals that addressed the trial court's decision to upwardly depart from the sentencing guidelines. Because the Court of Appeals granted defendant a new trial, defendant's challenge to his sentence was rendered moot. The Court of Appeals' discussion of this issue also wrongly left the impression that a departure sentence of life may only be imposed on a habitual offender when the sentencing offense is murder or a Class A felony. See MCL 769.12(1). We express no opinion, however, whether the extent of the trial court's sentencing departure was justified under *People v Smith*, 482 Mich 292 (2008). In all other respects, leave to appeal is DENIED because we are not persuaded that the remaining question presented should be reviewed by this Court.

MARILYN KELLY, J., would deny leave to appeal.



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 27, 2012

*Corbin R. Davis*

Clerk